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January 27, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Appeal*

Name of Case: Worker Appeal

Date of Filing: October 1, 2004

Case No.: TIA-0232

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits. The Applicant was a DOE contractor employee at a DOE facility. An independent physician panel (the Physician Panel or the Panel) found that the Applicant did not have an illness related to a toxic exposure at DOE. The OWA accepted the Panel's determination, and the Applicant filed an appeal with the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

*I. Background*

*A. The Energy Employees Occupational Illness Compensation Program Act*

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. As originally enacted, the Act provided for two programs. Subpart B provided for a Department of Labor (DOL) program providing federal compensation for certain illnesses. See 20 C.F.R. Part 30. Subpart D provided for a DOE assistance program for DOE contractor employees filing for state workers' compensation benefits. Under the DOE program, an independent physician panel assessed whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385o(d)(3); 10 C.F.R. Part 852 (the Physician Panel Rule). The OWA was responsible for this program, and its web site provides extensive information concerning the program.<sup>1</sup>

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<sup>1</sup> [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy)

The Physician Panel Rule provided for an appeal process. An applicant could appeal a decision by the OWA not to submit an application to a Physician Panel, a negative determination by a Physician Panel that was accepted by the OWA, and a final decision by the OWA not to accept a Physician Panel determination in favor of an applicant. The instant appeal was filed pursuant to that Section. The Applicant sought review of a negative determination by a Physician Panel that was accepted by the OWA. 10 C.F.R. § 852.18(a)(2).

While the Applicant's appeal was pending, Congress repealed Subpart D. Ronald W. Reagan Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (October 28, 2004). Congress added a new subpart to the Act - Subpart E, which establishes a DOL workers' compensation program for DOE contractor employees. Under Subpart E, all Subpart D claims will be considered as Subpart E claims. In addition, under Subpart E, an applicant is deemed to have an illness related to a workplace toxic exposure at DOE if the applicant received a positive determination under Subpart B.

During the transition period, in which DOL sets up the Subpart E program, OHA continues to process appeals of negative OWA determinations.

#### B. Procedural Background

The Applicant was employed as a process operator at DOE's Oak Ridge site. The Applicant worked at the site for nearly 22 years, from 1974 to 1996.

The Applicant filed an application with OWA, requesting physician panel review of six illnesses - basal cell carcinoma, melanoma, stroke, hypertension, cerebral vascular disease, and heart disease.

The Physician Panel rendered a positive determination for basal cell carcinoma and melanoma. The Panel rendered a negative determination on the remaining illnesses, finding no relationship between the illnesses and the Applicant's occupational exposures. For the claimed hypertension, the Panel cited smoking and other lifestyle factors as possible contributing factors. For the claimed cerebral vascular disease and heart disease, the Panel cited the predisposing medical conditions of hypertension and hyperlipidemia as probable causes and noted that those conditions were not related to the Applicant's occupational exposures.

The OWA accepted the Physician Panel's negative determinations on the claimed illnesses. The Applicant filed the instant appeal.

## II. Analysis

Under the Physician Panel Rule, independent physicians rendered an opinion whether a claimed illness was related to a toxic exposure during employment at DOE. The Rule required that the Panel address each claimed illness, make a finding whether that illness was related to a toxic exposure at DOE, and state the basis for that finding. 10 C.F.R. § 852.12.

In his appeal, the Applicant maintains that the negative determinations are incorrect. The Applicant argues that his employment-related stress at DOE contributed to his stroke. He does not advance any arguments concerning the other illnesses.

The Applicant's arguments do not provide a basis for finding panel error. As mentioned above, the Panel addressed the claimed illnesses, made a determination on each illness, and explained the basis of that determination. For each illness on which it gave a negative determination, the Panel determined that there was no evidence establishing a relationship between the illnesses and the Applicant's occupational exposures. The Applicant's only argument - that employment-related stress contributed to his stroke - does not indicate panel error. Assuming *arguendo* that the Applicant is correct concerning the role of stress in his stroke, "stress" is not a "toxic substance" and, therefore, is outside the scope of the Physician Panel Rule. See 10 C.F.R. § 852.2; *Worker Appeal*, Case No. TIA-0013 (January 16, 2003).

As the foregoing indicates, the appeal does not present a basis for finding panel error and, therefore, should be denied. In compliance with Subpart E, the claim will be transferred to the DOL for review. The DOL is in the process of developing procedures for evaluating and issuing decisions on these claims. OHA's denial of this claim does not purport to dispose of or in any way prejudice the DOL's review of the claim under Subpart E.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0232 be, and hereby is, denied.
- (2) This denial pertains only to the DOE claim and not to the DOL's review of this claim under Subpart E.

(3) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: January 27, 2005